

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

----- X
 In re: : Chapter 11
 :
 SPORTS AUTHORITY HOLDINGS, INC., ET AL.,¹ : Case Nos.: 16-10527 (MFW)
 :
 Debtor. : Objection Date: March 22, 2016 at 4:00 pm
 : Hearing Date: March 29, 2016 at 1:00 p.m.
 :
 : Ref. Docket Nos. 15, 93, 156 and 185
 ----- X

LIMITED OBJECTION OF MILL CREEK MALL, LLC TO EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING THE DEBTORS TO ASSUME THE CLOSING STORE AGREEMENT, (B) AUTHORIZING AND APPROVING STORE CLOSING SALES FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (C) AUTHORIZING THE IMPLEMENTATION OF CUSTOMARY EMPLOYEE BONUS PROGRAM AND PAYMENTS TO NON-INSIDERS THEREUNDER, (D) APPROVING DISPUTE RESOLUTION PROCEDURES, AND (E) APPROVING THE DEBTORS’ STORE CLOSING PLAN

Mill Creek Mall, LLC (“Landlord”) hereby submits this limited objection (“Objection”) to the Debtors’ Emergency Motion for Interim and Final Orders (A) Authorizing the Debtors to Assume the Closing Store Agreement, (B) Authorizing and Approving Store Closing Sales Free and Clear of All Liens, Claims and Encumbrances, (C) Authorizing the Implementation of Customary Employee Bonus Program and Payments to Non-Insiders Thereunder, (D) Approving Dispute Resolution Procedures, and (E) Approving the Debtors’ Store Closing Plan [D.I. 15] (the “Store Closing Motion”²) respectfully represents as follows:

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664).

² Capitalized terms shall have the same meaning ascribed to them in the Store Closing Motion, unless otherwise provided herein.



BACKGROUND

1. On March 2, 2016 (the "Petition Date"), the Debtors each filed voluntary petitions for relief under chapter 11, title 11, United States Code (the "Bankruptcy Code") with this Court.
2. The Debtors are operating their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
3. Landlord is the lessor of the real property known as The Stores at Mill Creek, and located at Route 3, Secaucus, NJ 07094 (the "Premises"). Landlord's tenant, and lessor of the Premises is debtor, TSA Stores, Inc. t/a Sports Authority ("SA" or "Tenant").
4. On May 12, 2008, MC Mall and SA entered into a Lease Agreement (the "Lease") for the Premises, which comprise approximately 47,250 square feet.
5. The Lease is a lease "of real property in a shopping center" within the meaning of section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-87 (3d Cir. 1990).
6. Pursuant to the Lease, SA is required to pay to Landlord "Rent" comprised of: (a) Fixed Rent ("Fixed Rent") of \$108,281.25 per month; and (b) Additional Charges, which are defined as "[a]ll amounts that become payable by Tenant to [Landlord under the Lease] other than Fixed Rent," including, among other items, real estate taxes (\$16,098.94 per month), late charges, and common area maintenance fees (\$11,017.79) (collectively, "Additional Rent").
7. The Debtors have not made a payment for post-petition rents for the Premises.
8. The Debtors have not paid rent under the Lease for the per diem period March 2 – 31, 2016, as well as for other related charges ("Stub Rent").

9. Although the Debtors' store at the Premises is not currently listed as one of the closing stores on the Debtors' Store Closing List [Docket No. 93], Landlord understands that the Debtors are free to designate additional closing stores on an ongoing basis.

OBJECTIONS TO ASSUMPTION OF CLOSING STORE AGREEMENT

10. In the Store Closing Motion, the Debtors seek a waiver of contractual restrictions in leases that restrict closing sales. There is no question that this Court may place reasonable limitations or constraints on a going out of business sales ("Closing Sale"). 11 U.S.C. § 363(e). Among other things, restrictions may be placed on the number, size, language, color, and placement of sale signage and banners, advertising, duration of the sale, and the condition and turnover of the premises at the end of the Closing Sale. Security for payment of rent during the sale period may also be obtained until the store is finally closed.

11. Of particular concern to Landlord is that the Debtors seek this Court's approval to operate in direct contravention, at least in part, of certain express terms in the Lease. Given that Closing Sales will necessarily erode certain protection afforded to landlords in their leases, any Final Order approving the Store Closing Motion must provide for the adequate protection of Landlord's interest in the Lease with the Debtors, as required by section 363(e) of the Bankruptcy Code. Further, adequate protection should be provided as a condition to the commencement of any Closing Store sale at the Premises.

12. Section 363(e) provides, in relevant part, that:

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased ... by the trustee, the court ... shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest ...

11 U.S.C. § 363(e). Certain terms of leases are customarily abrogated to permit a debtor to conduct store closing sales, typically provisions relating to signage as discussed above. Courts have recognized the need to balance the competing interests of a debtor, desiring to maximize the value of its estate, against those of its landlords, desiring to protect and preserve the benefit of their bargain. *See, e.g., In re Ames Dept. Stores, Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (“Section 363(e) reserves for the bankruptcy courts the discretion to condition the time, place and manner of GOB sales, thereby providing adequate safeguards to protect shopping center landlords and their other tenants, while allowing the [debtor] to fulfill its fiduciary obligations”). Section 361 of the Bankruptcy Code sets forth several examples of what may constitute adequate protection for purposes of section 363. Congress expressly rejected the allowance of an administrative claim as an appropriate form of adequate protection. 11 U.S.C. § 361(3). The Bankruptcy Code requires something more than an allowed claim to preserve a party’s interest in property used or leased by a debtor’s estate.

13. For the avoidance of doubt, this Objection serves as Landlord’s request for adequate protection under section 363(e) of the Bankruptcy Code. More specifically, to the extent that the Debtor’s store at the Premises becomes a Closing Store, this Court should require that the Debtors immediately pay Stub Rent owed under the Lease as adequate protection as a condition to the commencement of any Closing Sale. Absent the immediate payment of such Stub Rent, Closing Sales should not be permitted at the Stores. The alternative would be to force the landlords into the position of *de facto* lenders with respect to the Stub Rent due, without the ability to charge interest on their “loans” and with the very real risk of nonpayment.

14. The Store Closing Motion and proposed form of Final Order and the Store Closing Agreement leave open the possibility that additional stores may be designated as Closing

Stores, although the Debtors have not issued a definitive final list of the entire universe of Closing Stores. Landlord requests that in the event the Premises is designated as a Closing Store, that it be provided no fewer than ten (10) days' notice to negotiate the terms of a side letter agreement with the Liquidation Consultant. In addition, the Debtors should be required to provide Landlord with no fewer than seven (7) days' prior written notice of the termination of any Closing Sale at the Premises, which may be provided electronically to the undersigned.

15. Landlord is also concerned with the process to be used in order to hang outdoor signage for the Closing Sales, at the Premises. If not properly installed, the signage can cause significant damage to the Premises. For example, if holes are improperly drilled in a façade in order to hang GOB sale signage, water may penetrate and cause significant damage to Premises. As such, it is respectfully submitted that the Debtors' agents coordinate with Landlord's property managers before any signage is installed in order to assure installation is accomplished in a manner so as to not cause structural damage to the Premises.

16. Landlord also has the following objections to the Sale Guidelines:

- ***Hours of Operation.*** The GOB Sale should be conducted within the normal operating hours of the mall or shopping center. Here, while the Store Closing Motion contemplates store operation during normal mall hours, the Store Closing Motion contemplates removal of fixtures and related items, outside of normal hours. This should not be permitted.
- ***Mall/Center Regulations.*** The GOB Sale should comply with the mall or shopping center regulations or guidelines concerning security, maintenance, trash removal or any other pertinent guidelines.
- ***Compliance with the Law.*** The GOB Sale should comply with state and local consumer laws.
- ***Signage and Advertising.*** Reasonable restrictions should be placed on: (1) the language and wording used in the signs or advertising; (2) the number of signs or advertisements the Debtors will use; (3) the placement of any signs; (4) the color of the signs; (5) the use of amplified sound to advertise the GOB sale; and (6) the use of sign-walkers and handbills. While the Store Closing

Motion addresses certain of these concerns, it does not address sign walkers or handbills, nor does it address the installation issues set forth above.

- ***Merchandise.*** The Debtors should not be permitted to augment the inventory with new merchandise or merchandise from another of its stores. Landlord is particularly concerned with augmentation of the inventory with different categories of products, which may violate exclusivity provisions of other mall tenants.
- ***Rent and Lease Obligations.*** The Debtors should pay all post-petition administrative rent and otherwise comply with the lease obligations. The Debtors should be responsible for maintaining insurance.
- ***Abandonment of Property.*** The Debtors should not be permitted to abandon property within the leased premises after the GOB Sale, as currently contemplated by the Store Closing Motion. If abandoned, the Debtors should pay the cost of removing that property as an administrative expense. Landlord should also be absolved of all responsibility to the Debtors or third parties for property left behind.
- ***Maintenance of Premises.*** During the GOB Sale, the Debtors should be responsible for keeping the leased premises clean and maintained.

**JOINDER IN OBJECTIONS RAISED BY OTHER LANDLORDS
AND RESERVATION OF RIGHTS**

17. To the extent consistent with the objections expressed herein, Landlord also joins in the objections of other shopping center lessors to the Store Closing Motion. Further, Landlord reserves all rights to make further and/or future objections.

WHEREFORE, for the foregoing reasons, Landlord respectfully requests that this Court enter an order (a) directing the Debtors to pay Landlord's Stub Rent, (b) directing the Debtors to designate the remaining potential Closing Stores and preserve Landlord's rights to object to the Sale Guidelines for not fewer than ten (10) days after the date of designation to afford Landlord the opportunity to negotiate as side letter with the Liquidation Consultant, and (c) granting such other and further relief as this Court deems just and proper.

Dated: March 22, 2016

Respectfully submitted,

GIBBONS P.C.

By: /s/ Natasha M. Songonuga
Natasha M. Songonuga, Esq. (Bar No. 5391)
300 Delaware Avenue
Suite 1015
Wilmington Delaware 19801-1671
(302) 518-6300
(302) 429-6294
nsongonuga@gibbonslaw.com

Mark B. Conlan, Esq.
One Gateway Center
Newark, New Jersey 07102-5310
(973) 596-4500
(973) 596-0545
mconlan@gibbonslaw.com

-and-

D. Mark Leonard, Esq.
HOROWITZ, RUBINO & PATTON
400 Plaza Drive
P.O. Box 2038
Secaucus, NJ 07096
Tel: (201) 272-5309
Fax: (201) 272-6130
mark.leonard@hrplaw.com

Attorneys for Mill Creek Mall, LLC

CERTIFICATE OF SERVICE

I, Natasha M. Songonuga, hereby certify that on the 22nd day of March 2016, I caused a true and correct copy of the foregoing to be served by means of the CM/ECF electronic filing system and by email upon Debtors counsel listed below.

/s/ Natasha M. Songonuga
Natasha M. Songonuga (Bar No. 5391)

Michael R. Nestor
Kenneth J. Enos
Andrew J. Magaziner
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
Email: mnestor@ycst.com
kenos@ycst.com
amagaziner@ycst.com

Robert A. Klyman
Matthew J. Williams
Jeremy L. Graves
Sabina Jacobs
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-1512
rklyman@gibsondunn.com
mjwilliams@gibsondunn.com
jgraves@gibsondunn.com
sjacobs@gibsondunn.com